1944. **File No.** O. Khoti/44

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Subject:—

Opinions under the Khoti Settlement Act 1880

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Office of the R.L.A.

In 1933 the Khots and Ryots, both Hindus and Muslims, who are the 'mankaris' of the deity in the khoti village of Makhjan in Sangameshwar Taluka of the Ratnagiri District made a petition to the Collector that one Alli Saheb Mohidin Mahate had made an encorachment upon an open plot of public l land known as Sahan land (ile. land used for keeping the God's palanquin) by stacking stones etc. and that he intended to build a house thereon causing obstruction to the holi festival. Mr. Mundkur, the Prant Officer who held an enquiry under section 37(2) decided on 15th February 1938 that portions marked E.C.D.E. in the map at page 88 formed part of the land assigned for Sahan and that the portion marked yellow which was the subject matter of the enquiry , was in possession of Allisaheb for over 60 years and that Allisaheb was the owner of the plot by adverse possession even against Government. Subsequently, Baste and Prasade, two members of t the Hindu Community preferred an appeal which was dismissed by the Collector on 7th July 1939. The appellants moved the Bombay Revenue Tribunal which remitted the case back for fre enquiry on technical grounds. The case was then again sent to the Prant Officer, who after holding a fresh enquiry ~~re~~ passed an order on 18th February 1941 to the effect that Government were the owners of the land, that the possession of Alisaheb was recent and that the title by adverse possession had not accrued. On an appeal filed by Allisaheb against this order the Collector (Mr. Aminuddin) held on 14th April 1943 that the land being khoti and the khot being entitled to occupy and cultivate unassessed waste land in a khoti village, it fell outside the scope of section 37(2) of the Land Revenue Code and that it was a dispute between the khots and the villagers and not a dispute between the Government and the appellant. Against this decision the villagers have now filed a petition to the Commissioner, Southern Division. The question raised for the consideration

of the R.L.A. is whether the view taken by the Collector (Mr. Aminuddin) is correct.

2. With the exception of sections referred to in section 39 of the Khoti Settlement Act, 1880 the Land Revenue Code would ordinarily be applicable to Khoti villages in the Ratnagiri district unless any particular provision therein is in direct conflict with one under the Act in which case the latter will of course be determinative on the point (see Desai's Khoti Settlement Act, page 153). In Secretary of State vs. Vasudeo (93 L.R. 719) it has been held that section 37 of the Land Revenue Code was no bar to the Khot of a Khoti village appropriating any waste land for cultivation since such appropriation would not affect the ownership which vests in Government. In the present case the land in dispute has from time immemorial been used for a for a public purpose and cannot be deemed to be unoccupied waste. Consequently the view taken by the Collector (Mr. Aminuddin) is no correct and the formal enquiry held under section 37(2) of the Land Revenue Code was not unwarranted.

Sd/- P.N.Moos
24/1/44

Remembrancer of Legal Affairs.

U.R. to R.D., No 8378, dated the 28th November 1944.

Mjr/9/7
4 Cs.

Office of the R.L.A.

Dharampur is a Khoti Sharakati village in Sangameshwar Taluka of the District of Ratnagiri. Abdul Rahib Wd. Isub Dinganekar is a twelve anna sharer khot of that village. It appears that certain tenants of the village made an application on 1-5-1941 to the Recording Officer, N.D. Ratnagiri requesting him among other things to fix and enter commuted values of rents in respect of the lands in their khatas (including lands for which special maktas in kind were fixed). They based their claim for commuting special maktas on the ground of deterioration of the soil caused by floods. After a protracted enquiry, the Prant Officer fixed the cash commutation of rents in lieu of special maktas by his order dated 9-7-1943. Against this order the Khot Abdul Rahiman Wd. Isub Dinganekar has appealed to Government. His main contention is that the Recording Officer had no power to fix commutation rents in lieu of special maktas in kind already fixed and that the provisions of section 18,19 and 33 of the Khoti Act have been misapplied by the Prant Officer.

2. The Collector considers that the order of the Prant Officer fixing commutation value of special maktas is not correct; but there being deterioration in the soil due to floods, the reduction of rent of the special makta is justifiable. He observes: "The term" special makta" is not defined in the Khoti Act. It is in this case an amount fixed in kind in respect of a permanent tenant under rule 1(a) under clause (c) of section 33 of the Khoti Act. Under rule V, clause (c_2) of section 33, the Recording Officer can fix and enter the commuted value of the whole of the crop share (See definition of crop share in Rule I(b) under section 33(c) for any Khata in which crop-share has been ordered to be paid. Mr. Garrett, who fixed the cash commutation rents in lieu of crop-share for this village on 30-12-1909 has clearly said that this order does not apply to maktas or Panaspatti. The Prant Officer (Rao Bhadur Shitut) has in paragraph 4 of his order dated 9-7-43 held that the fixed quantity of rent in kind is a crop-share

I differ from this view. The special makta is an amount ~~is an amount~~ fixed in king irrespective of the crop as defined in Rule I(a), as opposed to crop-share which is defined in Rule I(b) and as it is not a crop-share "comuted value" cannot be fixed for the same under Rule V.....

Rao Bhadur Shitut considers deterioration of the soil as a change of circumstances so as to render the entry of the special makta in kind inapplicable or incorrect under section 18(3) (c) and has passed an order under section 18(3)(c) and (d) read with Rules IV and V under section 33(c) of the Khoti Act. Mr. Desai in his khoti Act (Note No. 4 on page 81) has given a list of cases which can be considered as changes of circumstances. The list however is not exhaustive. Mr. Desai does not also contemplate a change of the kind as in the present case. I am however inclined to agree with Rao Bahadur Shitut's view. In my opinion there are three ways in which relief to the permanent tenants can be can be granted for deterioration of the soil: (1) Deterioration of soil can be considered a change of circumstances falling under section 18(3)(c) and the entry of makta can be changed by the Recording Officer; or (ii) it can be considered as a ~~change~~ change in the tenant's mode of cultivation under Rule IV(1)(b) to section 33 in cases where the crop which could be grown formerly cannot be grown owing to deterioration of soil; or the case can even be covered by the word "otherwise" in Rule IV(1)(b), or (iii) reduction of survey assessment can first be obtained by making an application to the proper revenue authorities and then applying for relief under section 33(c), Rule IV(4) of the Khoti Act. It has been argued from the other side that the present case would fall only under section 33(c), Rule IV (4), but I do not agree with this view. In my opinion, the case would fall under section 18(3)(c) change of circumstances) and the Recording Officer can amend the entry regarding the makta." The Revenue Department appears to agree with the views of the Collector and has requested the R.L.R's advise on the following questions:

(1) Whether the Recording Officer's order in the case in

illegal as stated by the collector and

(2) Whether a revised order section 18(3)(c)of the Kho.. Act can now be passed. ~~xxx~~

3. The Recording Officer in this case has commuted into cash value of the special makta payable by the tenants under section 18(3), ~~caluse~~ clauses (c) and (d) read with Rules IV and V under section 33 of the Act. It is true that ~~caluse~~ clause (c) of section 18(3) empowers the Recording Officer to correct, change or cancel an entry made in the settlement-register rendered inapplicable o_ incorrect by any hange of circumstances of transfer of rights or interests relating thereto. The Recording Officer appears to construe the words "change of circumstance" wide enough to include deterioration of soil justifying reduction of rent. For the following reason his view of the applicability of clause (c) appears to be incorrect. It is a general principle of law that where a special provision is made in an Act for exercise of certain power, it is not permissible to pray in aid the more general provision made in the same Act (Rex vs. Halliday, 1917 A.C. 460 referred to in Keshav Talpade vs. King Emperor 1943, Federal Court's Reports, page 49 at page 69). The question raised in this case relates to a change of entry made in the settlement-register in respect of rents payable by permanent tenants. Obviously, this is covered by clause(d) of sub-section (3) of section 18 Further although the makta may be exessive, it is difficult to say that the entry is 'incorrect' or 'inapplicable' ~~clause~~ clause (c) deals with a class of cases different from the present. The being so, it is not permissible to resort to caluse (c) for the purpose of effecting any change of entry relating to the rent payable by privileged tenants. Consequently, it appears clear that clause (c) of section 18(3) cannot be resorted to at all and will have no application to the present case, the only provision relevant being ~~caluse~~ clause (d) of section 18(3) As stated in ~~caluse~~ clause 'd) of section 18(3), an entry of the description and amount of rent payable by a permanent tenant may be inserted or altered in accordance with any

of the provisions of Rules IB and V under ~~caluse~~ clause (c) of section 33. The question that arises for consideration will therefore be whether the entry in respect of rent payable by a permanent tenant can be altered under the provisions of Rules IV and V under ~~caluse~~ clause (c) of section 33. The Collector has reported that the rent payable by the permanent ~~xxxxxx~~ tenants in the present case is an amount fixed within the meaning of ~~caluse~~ clause (a) of Rule I under section 33 and not a crop-share under ~~caluse~~ clause (b) of Rule I. If so, Rule V will have no application to the present case, for that rule relates to the commutation value of crop.share, that is to say, crop. share within the meaning of ~~caluse~~ clause (b) of Rule I.

4. Under ~~caluse~~ clause (b), Rule IV(1) of Rules under section ~~33,xxxxx

sub-section 3(c) applies, correct. Government will have therefore to set aside the order of the Recording Officer and if any relief is needed to be given to the Permanent tenants on account of deterioration of soil, sub-rule (4) of Rule IV willhave to be invoked for the purpose.

Sd/- P.N.Mopps.
4/12/44

o.c.

Remembrancer of Legal Affairs.

U.R. to RD., No. 8533, dated 5th December 1944.

Mjr/9/7
4 Cs.